

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

NATIONAL SURETY CORPORATION,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 3:02CV217(CFD)
	:	
JAMES G. LEVIN, et al.,	:	
Defendants.	:	

RULING

Pending are defendant Paul Arpin Van Lines’ Motion to Dismiss [Doc. # 7] and defendant James Levin’s Motion to Dismiss [Doc. # 11]. The motions are DENIED and the case is STAYED pending resolution of Harris v. Levin, No. CV 99 0172230 S (Conn. Super. Ct. filed May 11, 1999).¹

In Wilton v. Seven Falls Co., 515 U.S. 277 (1995) the United States Supreme Court reaffirmed the standard set forth in Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491 (1942) governing a district court’s exercise of discretion to stay or dismiss a declaratory judgment action based on the existence of a parallel state court proceeding. See Wilton, 515 U.S. 286 (“No subsequent case, in our view, has called in the question the application of the Brillhart standard to the Brillhart facts.”). That Court observed that:

Although Brillhart did not set out an exclusive list of factors governing the district court’s exercise of this discretion, it did provide some useful guidance in that regard. The Court indicated that in deciding whether to enter a stay a district court should examine “the scope of the pending state court proceeding and the nature of the defenses open there.” This inquiry, in turn, entails consideration of “whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such

¹Harris v. Levin is now on the complex litigation docket of the Connecticut Superior Court and apparently has the docket number X06 CV 99 0170961S.

parties are amenable to process in that proceeding, etc.”

Id. at 282-83 (citing Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491 (1942)).

Here, it is clear that there is a pending state court proceeding—Harris v. Levin—that involves all the parties in this suit. The plaintiff, however, points out that the insurance policy at issue in this litigation has two “parts”—a Workers’ Compensation part and an Employers’ Liability part—and that only the Worker’s Compensation part is at issue in the state court. Because it seeks a declaratory judgment regarding the Employers’ Liability part of the policy, the plaintiff maintains that the Court should not stay or dismiss the case under Wilton. However, “where another suit involving the same parties and presenting *opportunity* for ventilation of the same state law issues, is pending in state court, a district court might be indulging in ‘gratuitous interference’ if it permitted the federal declaratory action to proceed.” Id. at 283 (emphasis added). Here, there is at least an opportunity for the plaintiff to raise the issues presented in this declaratory action in the pending state court proceeding, even if those issues have not yet been raised.²

For the foregoing reasons, the case is STAYED³ pending the outcome of Harris v. Levin, currently pending in the Connecticut Superior Court. The parties are also ordered to file a status report with the Court on the course of the state court litigation, including the status of the bankruptcy stay, by

²Also “tipping heavily in favor of abstention in this case, given Wilton . . . is the fact that state law [rather than federal law] will govern the outcome of this litigation.” Reliance Ins. Co. of Ill. V. Multi-Financial Securities Corp., No. 94 Civ. 6971(SS), 1996 WL 61763, at *3 (Feb. 13, 1996 S.D.N.Y.).

³The case is stayed rather than dismissed to protect the plaintiff in the event that the issues in this case are not resolved in the state court proceedings. See Wilton, 515 U.S. at 288 fn.2 (“[W]here the basis for declining to proceed is the pendency of a state proceeding, a stay will often be the preferable course because it assures that the federal action can proceed without risk of a time bar if the state case, for any reason, fails to resolve the matter in controversy.”)

June 1, 2003.

SO ORDERED this ____ day of March 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE